APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,080	09/03/2003	Peter V. Radatti	44-03	4112

7590 02/26/2007		EXAMINER	
Mr. Peter V. Radatti		NGUYEN, PHILLIP H	
CYBERSOFT, INC.			
1508 Butler Pike		ART UNIT	PAPER NUMBER
Conshohocken, PA 19428-1322		2191	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PC

	Application No.	Applicant(s)
Office Action Summary	10/654,080	RADATTI ET AL.
	Examiner	Art Unit	
	Phillip H. Nguyen	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>03 September 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-25</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-25</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>03 September 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the original filing date of September 3, 2003. Claims

1-25 are pending and have been considered below.

Note:

2.   Regarding those claims recite "for" or "capable" in the preamble and body of the

claims. It indicates intended use, as such does not carry patentable weight. The

limitations following the phrase "for" or "capable" describe only intended use but do not

necessarily required functionality of the claims. Applicant is required to amend the

claims so that the claims limitations are recited in a definite format. For example, claim

1 recites "for software demonstration" should be changed to "performs software

demonstration".

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

4.   Claims 18-25 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

Regarding claims 18-23, recite an apparatus but it appears reasonable to

interpret this system by one of ordinary skill in the art as software, per se. Applicant's

specification provides no explicit and deliberate definition of the components ("server",

"a program") that make up the system other than they could be software components,

which are directed to functional descriptive material, per se, and are therefore non-

statutory.

Regarding claims 24-25, recite an article of manufacture, which is directed to

software per se, lacking storage on a medium, which enables any underlying

functionality to occur. Therefore they are non-statutory subject matter.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1-8, 11, 13-15, 16-19, and 21-25 are rejected under 35 U.S.C. 102(b) as

being anticipated by Sampath et al. (United States Patent No.: US 6,266,774 B1).

<u>As per claim 1</u>:

Sampath discloses a method for software demonstration comprising:

-        providing an identified user with access (**"creating a secured

connection between the two computers 100 and 104"** Col 6, line 66-

67), via a network (**"a Local Area Network, a Wide Area Network"** Col

4, line 67), to a server comprising a program to be demonstrated (**"the

server computer 100 makes available information that can be**

accessed via Internet 102 by user computer 104 using a browser"

Col 5, line 5-7);

- receiving code from said identified user ("**the server computer 100 then**

responds to the user requests" Col 6, line 49-50, **the request is the**

URL);

- executing said program to be demonstrated using said code ("**the server**

computer 100 automatically executes the program on the user

computer 104" Col 7, line 65); and

- providing any results of said execution ("**the details of the execution of**

the downloaded program are recorded in the database 130 and the

user profile database 132" Col 7, line 67-Col 8, line 1-2).

As per claim 2:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said server is a highly secured server ("**the server computer**

100 creates a secured connection" Col 6, line 63).

As per claim 3:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said providing an identified user with access, via a network, to a

server comprising a program to be demonstrated further comprises

identifying a user ("...**performs a lookup in the user profile database**

132 to authenticate the user" Col 6, line 56-58), and providing said

identified user with access, via a network, to a server comprising a

program to be demonstrated ("**creating a secured connection between**

the two computers 100 and 104" Col 6, line 66-67).

As per claim 4:

Sampath discloses the method as in claim 1 above; and further discloses:

-       wherein said providing an identified user with access, via a network, to a

server comprising a program to be demonstrated further comprises

identifying a user and providing said identified user with access, via the

Internet ("**the Internet 102**" Col 5, line 2), to a server comprising a

program to be demonstrated ("**creating a secured connection between**

the two computers 100 and 104" Col 6, line 66-67).

As per claim 5:

Sampath discloses the method as in claim 4 above; and further discloses:

-       wherein said identifying a user further comprises identifying a user

through supplying a user with a unique, operational email address ("**a**

user's e-mail address 304" Col 6, line 52; **also see Fig. 3**).

As per claim 6:

Sampath discloses the method as in claim 4 above; and further discloses:

- .   wherein said identifying a user further comprises identifying a user

through supplying a user with a unique, operational user ID

("**identification number 302**" Col 6, line 52; **also see Fig. 3**).

As per claim 7:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said providing an identified user with access, via a network, to a

server comprising a program to be demonstrated further comprises

providing an identified user with access, via a network, to a server

comprising an email scanning program to be demonstrated ("**anti-virus**

program" Col 7, line 9).

As per claim 8:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said providing an identified user with access, via a network, to a

server comprising a program to be demonstrated further comprises

providing an identified user with access, via a network, to a server

comprising an email scanning program to be demonstrated ("**anti-virus**

program" Col 7, line 9; **anti-virus program is a proscribed code**

scanner program checking for virus before releasing code to user).

As per claim 11:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said receiving code from said identified user further comprises

receiving code for a predetermined time from said identified user ("**upon**

the expiration of a time period set by the ICSP, a report is generated

by the server computer..." Col 8, line 12-13).

As per claim 13:

Sampath discloses the method as in claim 1 above; and further discloses:

- wherein said providing any results of said execution further comprises

providing any results of said execution via a web page ("**the server**

computer 100 comprises web server software 120, and is coupled to

server-side engines 150 to deliver Hyper Text Markup Language

(HTML), ASP, ActiveX" Col 5, line 17-20).

As per claim 14:

Sampath discloses the method as in claim 1 above; and further discloses:

- providing said identified user with an option to purchase said program

("...**customer may purchases a subscription...**" Col 6, line 39).

As per claim 15:

Sampath discloses the method as in claim 1 above; and further discloses:

providing said server with a secure shut down mechanism ("**the termination of the secure connection, are events caused by the server computer 100**" Col 7, line 10-11).

As per claim 16:

Sampath discloses a method for software demonstration comprising:

- providing an identified user with access ("**creating a secured connection between the two computers 100 and 104**" Col 6, line 66-67), via a network ("**a Local Area Network, a Wide Area Network**" Col 4, line 67), to a server comprising at least two programs to be demonstrated ("**...various software that are delivered to the client computer 104...**" Col 6, line 1-2);

- receiving code from said identified user ("**the server computer 100 then responds to the user requests**" Col 6, line 49-50, **the request is the URL**);

- executing said programs to be demonstrated using said code ("**the server computer 100 automatically executes the program on the user computer 104**" Col 7, line 65); and

- providing any results of said execution ("**the details of the execution of the downloaded program are recorded in the database 130 and the user profile database 132**" Col 7, line 67-Col 8, line 1-2).

As per claim 17:

Sampath discloses a method for software demonstration comprising:

- identifying a user ("...**performs a lookup in the user profile database 132 to authenticate the user**" Col 6, line 56-58);

- providing an identified user with access ("**creating a secured connection between the two computers 100 and 104**" Col 6, line 66-67), via a network ("**Internet 102**" Col 5, line 2), to a server comprising a program to be demonstrated ("**the server computer 100 makes available information that can be accessed via Internet 102 by user computer 104 using a browser**" Col 5, line 5-7);

- receiving code from said identified user ("**the server computer 100 then responds to the user requests**" Col 6, line 49-50, **the request is the URL**);

- executing said program to be demonstrated using said code ("**the server computer 100 automatically executes the program on the user computer 104**" Col 7, line 65); and

- providing any results of said execution ("**the details of the execution of the downloaded program are recorded in the database 130 and the user profile database 132**" Col 7, line 67-Col 8, line 1-2).

As per claim 18:

Sampath discloses an apparatus for software demonstration comprising:

- a program to be demonstration ("**anti-virus program**" Col 7, line 9);

- a server ("**server computer 100**" Col 5, line 3), accessible to an

  identified user, said server being configured to receive code from said

  identified user ("**the server computer 100 then responds to the user**

  requests" Col 6, line 49-50, **the request is the URL**), execute said

  received code with said program to be demonstrated ("**the server**

  computer 100 automatically executes the program on the user

  computer 104" Col 7, line 6), and provide results of said execution ("**the**

  details of the execution of the downloaded program are recorded in

  the database 130 and the user profile database 132" Col 7, line 67-

  Col 8, line 1-2).

As per claim 19:

Sampath discloses the apparatus as in claim 18 above; and further discloses:

- wherein said program to be demonstrated comprises an email scanning

  program ("**anti-virus program**" Col 7, line 9).

As per claim 21:

Sampath discloses the apparatus as in claim 18 above; and further discloses:

- wherein said server is accessible to said identified user via the Internet

  ("**internet 102**" Col 5, line 2).

As per claim 22:

Sampath discloses the apparatus as in claim 18 above; and further discloses:

-     wherein said server is configured to provide results of said execution via a web page (**"the server computer 100 comprises web server software 120, and is coupled to server-side engines 150 to deliver Hyper Text Markup Language (HTML), ASP, ActiveX"** Col 5, line 17-20).

As per claim 23:

Sampath discloses the apparatus as in claim 18 above; and further discloses:

-     wherein said apparatus is in distributed form (**"the server computer 100 can comprise a distributed computing system"** Col 8, line 52).

As per claim 24:

Sampath discloses an article of manufacture comprising:

-     a web sit providing access to a program to be demonstrated ("web page 300" Col 6, line 46), whereby said program to be demonstrated is capable of executing code provided by an identified user (**"the server computer 100 automatically executes the program on the user computer 104"** Col 7, line 65) and said web sit further provides results of said execution (**"the details of the execution of the downloaded**

program are recorded in the database 130 and the user profile

database 132" Col 7, line 67-Col 8, line 1-2).

As per claim 25:

Sampath discloses the article of manufacture as in claim 24 above; and further

discloses:

- wherein said website further provides results of said execution via a web

    page ("**the server computer 100 comprises web server software 120,**

    and is coupled to server-side engines 150 to deliver Hyper Text

    Markup Language (HTML), ASP, ActiveX" Col 5, line 17-20).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 9, 10, 12, and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Sampath et al. (United States Patent No.: US 6,266,774 B1).

As per claim 9:

Sampath discloses the method as in claim 1 above, but does not explicitly

disclose:

- wherein said receiving code from said identified user further comprises

receiving email from said identified user.

However, it would have been obvious to one having an ordinary skill in the art at

the time the invention was made to recognize that user you can email the server the to

request a program download/execution. One of ordinary skill in the art would have been

motivated to use the emailing method because emailing the server to request software

downloading is one of the well-known methods.

As per claim 20:

- recites the same limitation as recited in claim 9 and therefore has been

addressed in connection with the rejection set forth to claim 9 above.

As per claim 10:

Sampath discloses the method as in claim 9 above, but does not explicitly

disclose:

- wherein said receiving email from said identified user further comprises

receiving a predetermined amount of email from said identified user.

However, it would have been obvious to one having an ordinary skill in the art at

the time the invention was made to recognize that the sending too many number of

emails to the server would overload the server. Therefore, one of the ordinary skill in

the art would have been motivated to set a predetermined amount of email send by

each user to prevent from overload the server.

As per claim 12:

Sampath discloses the method as in claim 1 above, but does not explicitly

disclose:

-        wherein said executing said program to be demonstrated using said code

further comprises executing an email scanning program to be

demonstrated using email provided by said user.

However, It would have obvious to one having an ordinary skill in the art at the

time the invention was made to recognize the emailing option and uses it to request

program executing/downloading from the server. Therefore, one of ordinary skill in the

art would have been motivated to use email for program executing because emailing

the server for software executing is one of the well-known method.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phillip H. Nguyen whose telephone number is (571)

270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM -
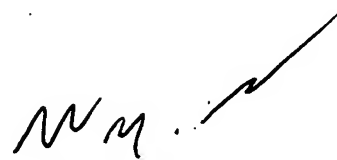
3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
02/16/2007

WEI ZHEN
SUPERVISORY PATENT EXAMINER